



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

RENAISSANCE HOSPITAL HOUSTON  
C/O BURTON & HYDE PLLC  
PO BOX 684749  
AUSTIN TX 78768-4749

**Carrier's Austin Representative Box**  
#01

**MFDR Date Received**  
OCTOBER 25, 2007

#### **Respondent Name**

LIBERTY INSURANCE CORP

#### **MFDR Tracking Number**

M4-08-1249-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated October 19, 2007:** "This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A)...Per the stop-loss method the carrier should have reimbursed the provider \$211,843.86."

**Requestor's Supplemental Position Summary Dated November 1, 2011:** "1. The Audited charges of \$282,458.48 for [Claimant's] hospital inpatient admission exceeds the \$40,000 stop-loss threshold. 2. The services rendered to [Claimant] were unusually costly and extensive...because:

- **[Claimant] underwent multiple surgeries.** On March 14, 2007 [Claimant] underwent the following surgical procedures: (1) L5-S1 anterior osteotomy; (2) L5-S1 anterior discectomy; (3) insertion of anterior prosthesis, Stalift TT; and (4) anterior interbody fusion L5-S1. After the completion of these surgical procedures [Claimant] was monitored due to complications discussed below and then on March 16, 2007 she was readmitted to surgery for the following surgical procedures: (5) inspection of fusion at L5-S1; (6) left L5-S1 pedicle stabilization; and (7) L5-S1 bilateral posterolateral arthrodesis.
- **[Claimant] suffered complications.** After [Claimant's] surgical procedures on March 14, 2007 she was admitted to the ICU for monitoring her bowel function was slow to return and motility drugs were used as treatment. [Claimant] again was admitted to the ICU because of motility problems involving her bowels after the surgical procedures performed on March 16, 2011.
- **The costs were front-loaded.** The cost associated with the hospital's services in this case are front loaded-i.e. the injured employee underwent complicated surgical procedures requiring an investment in skilled professionals and advanced facilities and medical equipment... For these reasons, the Medical Fee Dispute Officer should find that the second-prong of the two part test is satisfied and order additional reimbursement be paid by the carrier according to the stop-loss calculation methodology."

**Amount in Dispute:** \$104,382.77

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated November 6, 2007:** "The bill and documentation attached to the medical dispute have been re-reviewed. We will make an additional payment for the implants based on wholesale invoices...The bill was paid as follows: Due to the fact that the anterior and the posterior repairs were performed on separate days of service, the stop loss guidelines were applied. The in-patient bill was paid per TX

FS stop loss guidelines, for the first 7 days of the hospital in-patient stay, after auditing the billed charges. The last 3 days 03/21/07 - 03/24/07 were denied as pre-authorization was requested, but denied for this service per TWCC Rule 134.600. The implants were reimbursed at cost + 10%. After re-reviewing the implant invoices attached to the medical dispute package, will adjust the bill to pay an additional payment at cost + 10% per the whole implant invoices...The PPO discount of 40% from audited charges, was applied, and PPO discount of 10% from fee schedule of the implant allowable per the PPO implant exclusion in the contract."

**Response Submitted by:** Liberty Mutual Insurance Co.

**Respondent's Supplemental Position Summary Dated November 30, 2011:**

**I. "Summary:**

Requestor has failed to meet the Austin Third Court of Appeals' mandate that, to qualify for reimbursement under the Stop-loss Exception...a hospital must demonstrate two things: the services it provided during the admission were unusually costly and unusually extensive, and its total audited charges exceeded \$40,000.

**II. The Services Were Not Unusually Extensive.**

In short: the procedure was routine except for the hospital acquired condition.

**III. The Services Were Not Unusually Costly.**

Requestor invites the Division to view its inflated charges as innately indicative of the complexity and cost of the underlying service, effectively reducing the Stop-Loss Exception to a charge-based system whereby the amount of the bill determines the amount the hospital is due. The Division, in the preamble to the Acute Care Inpatient Hospital Fee Guideline, explicitly rejected this argument. Noting that hospitals determine their own charges, and stressing those charges cannot be verified as a valid indicator of their costs...Because Requestor has not met its burden of demonstrating unusually extensive services, and the documentation adduced thus far fails to provide any rationale for the Requestor's qualification for payment under the Stop-Loss Exception, Respondent appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due the Requestor."

**Response Submitted by:** Hanna & Plaut LLP

***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
March 14, 2007 through March 24, 2007	Inpatient Hospital Services	\$104,382.77	\$0.00

***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits

- 42 – CHARGES EXCEED OUR FEE SCHEDULE OR MAXIMUM ALLOWABLE AMOUNT.
- Z710 – THE CHARGE FOR THIS PROCEDURE EXCEEDS THE FEE SCHEDULE ALLOWANCE.

- 24 – PAYMENT FOR CHARGES ADJUSTED. CHARGES ARE COVERED UNDER A CAPITATION AGREEMENT/MANAGED CARE PLAN.
- P303 – THIS SERVICE WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT.
- 39 – SERVICES DENIED AT THE TIME AUTHORIZATION/PRE-CERTIFICATION WAS REQUESTED.
- X388 – PRE-AUTHORIZATION WAS REQUESTED BUT DENIED FOR THIS SERVICE PER TWCC RULE 134.600.
- Z612 – THIS BILL WAS REVIEWED IN ACCORDANCE WITH YOUR CONTRACT WITH FIRST HEALTH. FOR QUESTIONS REGARDING YOUR CONTRACT, PLEASE CALL (800) 937-6824.
- X598 – CLAIM HAS BEEN RE-EVALUATED BASED ON ADDITIONAL DOCUMENTATION SUBMITTED; NO ADDITIONAL PAYMENT DUE.
- Z782 – PAYMENT REDUCED DUE TO LACK OF WHOLESALE INVOICE.
- W1 – WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT.
- Z695 – THE CHARGES FOR THIS HOSPITALIZATION HAVE BEEN REDUCED BASED ON THE FEE SCHEDULE ALLOWANCE.
- Z989 – THE AMOUNT PAID PREVIOUSLY WAS LESS THAN IS DUE. THE CURRENT RECOMMENDED AMOUNT IS THE RESULT OF SUPPLEMENTAL PAYMENT.

U.S. Bankruptcy Judge Michael Lynn issued a “STIPULATION AND ORDER GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT CONTINUANCE AND ADJUDICATION OF DISPUTED WORKERS COMPENSATION CLAIMS BEFORE THE TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS,” dated August 27, 2010, in the case of *In re: Renaissance Hospital – Grand Prairie, Inc. d/b/a/ Renaissance Hospital – Grand Prairie, et al.*, in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division in Case No. 08-43775-7. The order lifted the automatic stay to allow continuance of the claim adjudication process as to the workers’ compensation receivables before SOAH, effective October 1, 2010. The order specified John Dee Spicer as the Chapter 7 trustee of the debtor’s estate. By letter dated October 5, 2010, Mr. Spicer provided express written authorization for Cass Burton of the law office of Burton & Hyde, PLLC, PO Box 684749, Austin, Texas 78768-4749, to be the point of contact on Mr. Spicer’s behalf relating to matters between and among the debtors and the Division concerning medical fee disputes. The Division will utilize this address in all communications with the requestor regarding this medical fee dispute.

### Issues

1. Does the documentation support that a contractual agreement issue exists in this dispute?
2. Does a preauthorization issue exist in this dispute?
3. Did the audited charges exceed \$40,000.00?
4. Did the admission in dispute involve unusually extensive services?
5. Did the admission in dispute involve unusually costly services?
6. Is the requestor entitled to additional reimbursement?

### Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals’ November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals’ November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection...” 28

Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. The insurance carrier reduced or denied disputed services with reason code “24, P303, and Z612.” Review of the submitted information finds insufficient documentation to support that the disputed services are subject to a contractual agreement between the parties to this dispute. The above denial/reduction reason is not supported. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines
2. According to the explanation of benefits, the respondent denied reimbursement for dates of service March 21, 2007 through March 24, 2007 based upon reason codes “39 and X388.”

28 Texas Administrative Code §134.600(q)(1) states “The health care requiring concurrent review for an extension for previously approved services includes: inpatient length of stay.”

The requestor did not submit documentation to support that preauthorization approval was obtained for the additional three days; therefore, a preauthorization issue exists in this dispute. As a result, reimbursement cannot be recommended for dates of service March 21, 2007 through March 24, 2007.

3. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states “...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed...” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$282,458.48. The Division concludes that the total audited charges exceed \$40,000.
4. In its original position statement, the requestor asserts that “This bill should have been audited and reimbursed per the Stop-Loss reimbursement factor and methodology per the criteria as defined in TDI-DWC rule 134.401(c)(6)(A).” 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that “This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission.” The Third Court of Appeals’ November 13, 2008 opinion states that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” The requestor’s original position statement failed to discuss the particulars of the admission in dispute that may constitute unusually extensive services. In its supplemental position statement, the requestor considered the Courts’ final judgment. In regards to whether the services were unusually extensive, the Third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually extensive services. The requestor’s supplemental position statement asserts, that “The services rendered to [Claimant] were unusually costly and extensive...because: [Claimant] underwent multiple surgeries. [Claimant] suffered complications.” The requestor’s position that this admission is unusually extensive due to surgical procedures and complications fails to meet the requirements of §134.401(c)(2)(C) because the requestor failed to demonstrate how the services in dispute were unusually extensive in relation to similar spinal surgeries or admissions. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
5. 28 Texas Administrative Code §134.401(c)(6) states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor in its supplemental position summary states:

The costs were front-loaded. The cost associated with the hospital’s services in this case are front loaded-i.e. the injured employee underwent complicated surgical procedures requiring an investment in skilled professionals and advanced facilities and medical equipment.

The requestor does not list or quantify the costs associated with these resources in relation to the disputed services, nor does the requestor provide documentation to support a reasonable comparison between the resources required for the spinal surgery. Therefore, the requestor fails to demonstrate that the resources used in this particular admission are unusually costly when compared to resources used in other types of surgeries.

The division concludes that the billed charges for the services do not represent the cost of providing those services. The requestor fails to demonstrate that the hospital’s resources used in this particular admission are unusually costly.

6. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code

§134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission...” The length of stay was ten days; however, documentation supports that the respondent pre-authorized a length of stay of seven days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently, the per diem rate allowed for the seven preauthorized days in ICU is \$10,920.00 (\$1,560.00 X 7).
- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).”
- A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at \$124,962.85.
- The Division finds the total allowable for the implants billed under revenue code 278 is:

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
5.5 x 30mm Screw	2	\$500.00/each	\$1,100.00
Integro DBM Putty 3cc	1	No support for cost/invoice	\$0.00
Graft Infuse Bone Med	2	\$4,600.00/each	\$10,120.00
Barrier Adhesion	2	No support for cost/invoice	\$0.00
Midline 39mm 8 Deg	1	\$8,500.00	\$9,350.00
Spiral Pak II Bone Growth	1	\$4,200.00	\$4,620.00
6.5mm x 35 Cannulated	2	\$1,595.00/each	\$3,509.00
Northstar Guidewire	1	\$100.00	\$110.00
Cancellous Bone Chip 30cc	2	\$850.00/each	\$1,870.00
Northstar Pedicle Marker	3	\$150.00/each	\$495.00
Putty Allograft 10cc	1	\$1,340.00	\$1,474.00
5.5 x 40mm Curved Rod	1	\$360.00	\$396.00
Cap Screw	2	\$280.00/each	\$616.00
TOTAL	21		\$33,660.00

- The medical documentation provided finds that although the requestor submitted purchase orders to support what the requestor was charged by the supplier for the implantables, there was no documentation found to support the amounts that the requestor paid for the implantables. The division finds that the cost to the hospital for the Integro DBM Putty 3cc, and Barrier Adhesion billed under revenue code 278 cannot be established; therefore no reimbursement can be recommended for these items.
- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$276.00/unit for Trandate 5 MG/ML Vial 20 ML, and \$287.50 for Thrombinar 10,000 units. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The division concludes that the total allowable for this admission is \$44,580.00. The respondent paid \$107,461.09. Based upon the documentation submitted, no additional reimbursement can be recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

## **Authorized Signature**

_____ Signature	_____ Medical Fee Dispute Resolution Officer	<u>3/27/2013</u> Date
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_____ Signature	_____ Health Care Business Management Director	<u>3/27/2013</u> Date
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## ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party.***

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**